IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 30855 of 2004(W)

PETITIONER:

K. DIVAKARAN, PUTHENPARAMBIL HOUSE,
MARARIKULAM SOUTH, KATTOOR P.O.,
KALAVOOR, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.K.SATHEESH.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI-110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL ADMINISTRATION (FFP.A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY GOVT. PLEADER SRI.THOMAS MATHEW NELLIMOOTTIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.30855/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. R. DIS. 78169/83/H4 DT. 29/11/1983 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P.2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DTD. 23/03/1998.

EXT.P.3: COPY OF THE REPRESENTATIONS UBMITTED BY THE PETITIONER DT. NIL.

EXT.P.4: COPY OF THE PKC ISSUED BY SRI. NARAYANAN RAMANKUTTY DTD. 02/03/2002.

EXT.P.5: COPY OF THE NAC ISSUED BY THE CJM COURT, ALAPPUZHA.

EXT.P.6: COPY OF THE JUDGMENT DT. 20/09/02 OF THIS HON'BLE COURT IN O.P. NO. 26873/02.

EXT.P.7: COPY OF THE LETTER NO. 78867/FFP A2/2002/GAD DT. 06/11/2002 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.8: COPY OF THE LETTER NO. 52/CC/KER/88/2002-FF SZ) DT. 20/01/2003 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.9: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DT. 27/04/2004.

EXT.P.10: COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANID DTD. 27/04/2004.

EXT.P.11: COPY OF THE LETTER NO. 66725/FFP A2/2004/GAD DT. 07/09/04 ISSUED BY THE R.2. TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 30855 of 2004-W.

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Dated this the 20th day of August, 2007.

J U D G M E N T

The challenge is against the order Ext.P8 issued by the first respondent rejecting the application for grant of Swathantrata Sainik Samman pension. The application is rejected for the main reason that the State Government has not recommended his claim and also for the reason that no official records have been produced by the petitioner. The State Government has not recommended his claim in view of the fact that the case number mentioned by the petitioner is P.E.7/1122 and the period of underground suffering is from November, 1946 to August, 1947, whereas the certifier has certified a prior period. The other certificates by Sri.V.K.Karunakaran and Sri.C.G.Sadasivan, Ex-M.L.A. were found not acceptable. The petitioner thereafter filed Ext.P9 representation before the State Government producing Ext.P10 personal knowledge certificate of Sri.H.K.Chakrapani, wherein the underground suffering of the petitioner is from November, 1946 to August, 1947, because of the warrant of arrest issued by the Special First Class Magistrate Court, Alappuzha in P.E.7/1122 M.E. On the basis of Ext.P9 the

petitioner was issued Ext.P11 by the State Government informing that appropriate remarks have been furnished to the Government of India for further action.

2. In the counter-affidavit by the Central Government it is averred that there is no positive recommendation by the State Government. The State has also filed a counter-affidavit. The reasons for not recommending the application of the petitioner are; (i) insufficient certificates of Sri.V.K.Karunakaran and Sri.C.G.Sadasivan, Ex-M.L.A.; (ii) the non-availability of records certificate is produced from the Chief Judicial Magistrate Court, Alappuzha whereas P.E.7/1122 M.E. is a case concerning Special Magistrate Court, Alappuzha; and (iii) the certificate from Sri.H.K.Chakrapani shows that the petitioner remained underground during the period 8.3.1114 M.E. to 16.12.1114 M.E. and 26.10.1116 to 22.8.1117.

3. This is a case where the petitioner was sanctioned pension by the State Government as per Ext.P1 for participation in the very same struggle namely, Punnapra-Vayalar. The objections raised as far as the certificates of Sri.V.K.Karunakaran and Sri.C.G.Sadasivan, Ex-M.L.A., are not relevant now in view of the fact that the petitioner is not relying upon the said certificates. Therefore, the said reason stated in the counter-affidavit for not recommending the application need not be adjudicated here. Then the other

is that the the non-availability of records certificate issued from the Chief Judicial Magistrate Court, Alappuzha cannot be acted upon since the case P.F.7/1122 is of the Special Magistrate Court, Alappuzha. It is well known that the Special Magistrate Court is no longer in existence and the Chief Judicial Magistrate Court is the Court now in existence there. Therefore, the petitioner could have applied for grant of non-availability of records certificate only from that court. This aspect is clearly overlooked by the State Government. Therefore, the said reason is also not correct. The third one is regarding the discrepancy of the periods of underground sufferings. To judge the correctness of it, a reference to the certificate Ext.P10 issued by Sri.H.K.Chakrapani is necessary. In it he has certified that the sufferings of the petitioner is for more than 6 months from November, 1946 to August, 1947. The averments in the counter-affidavit are plainly incorrect as actually the details mentioned are contained in the certificate of Sri.V.K.Karunakaran and not of Sri.H.K.Chakrapani. Therefore, these averments have been made without any application of mind. All the three reasons stated are thus not sustainable. The decision not to recommend his application is thus vitiated by non-application of mind. The approach made is too technical also.

4. Therefore, there will be a direction to the 2nd respondent to forward due recommendation to the first respondent especially considering

the fact that the State Government has granted pension to him for participation in the Punnapra-Vayalar struggle itself. The same shall be done within six weeks from the date of receipt of a copy of this judgment. On receipt of the same from the State Government, the first respondent shall pass fresh orders within a further period of two months thereafter. The entitlement of the petitioner for arrears from the date of receipt of Ext.P2 application dated 23.3.1998 shall also be considered by the first respondent.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-